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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 843

ROBERT KRAUSE, LAWRENCE MILLER, THOMAS J. McMANUS, JR., FRANCIS HIGGINS AND JOSEPH GOLDBERG,

Petitioners.

vs.

WILLIAM G. BUCHER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION.

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I. STATEMENT.

A. Preliminary.

Respondent (plaintiff below), a citizen of Oklahoma, came to Chicago to be married. Shortly after his arrival in Chicago respondent was unlawfully arrested, assaulted, shot, searched and imprisoned at the hands of the petitioners (defendants below). This action in tort was com-

menced to recover damages resulting from petitioners' unlawful acts.

The petitioners' "Summary and Short Statement of the Matter Involved" is neither summary nor short. It is unduly discursive and includes many significant mis-statements and omissions of fact together with considerable argument and conclusions of law. The result is an entirely distorted picture of the facts.

A reading of the statement of the case in the opinion of the Court of Appeals (R. 813-816) reveals the distortion in petitioners' present statement of the facts. In order to supply necessary record references for facts stated by the Court of Appeals, and to correct the inaccuracies of petitioners' statement, we are obliged to make a supplemental statement, indicating such facts as have been omitted or mis-stated by petitioners. (An asterisk (*) will indicate matter directly controverting or omitted from petitioners' statement.)

B. Supplemental Statement of Facts.

Just before midnight on Friday, September 23, 1949, plaintiff, William Bucher, arrived in Chicago to marry Ruth Franke, in a ceremony scheduled for the following day, Saturday, at 3:00 P. M. He was 24 years old, a Navy veteran, and a resident of Tulsa, Oklahoma, where he was employed by American Airlines. After notifying Ruth by telephone of his arrival, he registered at the Astor Hotel at 172 North Clark Street, having called six or seven hotels before finding a room. He put his bags in his room and returned to the lobby from whence he entered the adjoining Cloverbar Lounge. There he seated himself at the bar and ordered a bottle of beer (R. 73-78).

Sometime earlier this same evening defendant policemen Krause, Higgins, McManus and Miller were question-

ing in the 37th District Police Station one Bennie Crutale, who had held up the Pin Up Club (a tavern at 615 North Clark Street) the week before (P. Ex. 35, R. 279, 721). He first denied, then confessed to, the Pin Up Club robbery;* on further questioning he stated that he had just telephoned a friend of his named Nick who was at the Cloverbar Lounge (R. 335, 459, 519). Nick had not answered the 'phone initially; someone at the Cloverbar had called him to the 'phone (R. 371).* According to Krause and Miller, Crutale gave them a description of Nick, and said he believed Nick would have a gun and that he and Nick were going to do some "jobs together" (R. 404, 519). Crutale at no time told the defendants that Nick was with him at the Pin Up Club robbery or on any previous robberies (R. 267).* None of the officers obtained a written statement from Crutale the night of his arrest (R. 374).* (The only written statement signed by Crutale was taken at 2:02 P. M. Saturday, September 24th, which was six hours after he had seen Bucher in the Bridewell and had said he was not Nick.)* According to defendant McManus he had made a pencil notation of the description of Nick given him by Crutale, but he was unable to produce it during the trial (R. 269).*

The four defendants Krause, Higgins, Miller and McManus thereupon proceeded to the Cloverbar Lounge in plain clothes, it having been agreed that defendants Krause and Higgins, who looked less like policemen, were to enter the Lounge and that Miller and McManus would remain outside standing guard (R. 245, 480, 508). They had no warrant for the arrest of either Nick or William Bucher.*

Defendant Krause had exchanged revolvers with his partner, defendant Miller, because Miller's gun was shorter and would fit in Krause's topcoat pocket (R. 244, 247).*

Krause and Higgins did not at first ask to see the manager of the bar nor did they talk to the bartender or the clerk of the Hotel (R. 372).* The officers did not ask anyone in the bar whether a call had shortly before been received for a person named Nick (R. 372).*

After surveying the patrons in the Cloverbar Lounge, defendants Krause and Higgins approached William Bucher from behind, Krause on the left and Higgins on the right. Whether they announced themselves to plaintiff as police officers and showed him their stars (R. 342, 463) is in dispute (R. 78, 80). (Krause admitted he had not tried in inform plaintiff he was under arrest, or the reason therefor, prior to the assault (R. 378).)* Suddenly Krause and Higgins grabbed Bucher, pressed their bodies against his upper arms and held his forearms, pressing him forward against the bar. Plaintiff tried to free himself and reached for his billfold which was in his left hip pocket (R. 78), whereupon Krause shot him (R. 417). Following the shot, Higgins *threw* plaintiff to the barroom floor (D. Ex. 12, R. 581, 745).* The defendants Krause and Higgins then searched plaintiff and while doing so, plaintiff kept asking what was happening, why he was shot and why they were treating him so (R. 80, 131-132).* They finally told him they were looking for a suspect (R. 80).* Plaintiff had never carried a gun on his person (R. 81)* and these defendants did not find one (R. 81). They did find, however, numerous identification cards, including a social security card,* driver's license,* Naval Reserve cards,* an American Airlines ticket (setting forth the name of William Bucher and showing that he had flown from Tulsa, Oklahoma, arriving in Chicago that night),* and an American Airlines employee identification card* showing a picture of William Bucher, his height, weight, color of hair and eyes, and bearing a legend stating that

the present employment status of the bearer could be obtained by contacting the local American Airlines office (see P. Ex. 5-19, R. 114, 279, 700-704).* Krause and Higgins examined these sources of identification and removed them from plaintiff's person, together with his wallet and other valuables (R. 248, 255, 388). After the shooting, Miller and McManus entered the barroom and learned that the person Krause had shot was William G. Bucher of Tulsa, Oklahoma (R. 511, 534).* Krause at no time called the local American Airlines office (R. 388).*

Krause and Higgins carried plaintiff to the rear of the bar where they laid him on the floor (R. 80, 132).* While on the floor, plaintiff told all four officers that he was to be married to Ruth Franke, gave them her phone number and asked them to call her (R. 87, 135),* which they did not do (R. 249, 538).*

Then two uniformed policemen took plaintiff to Henrotin Hospital in a police ambulance. A nurse looked at his wound and gave him some pills (R. 82). Then they took him in the same police ambulance to the Bridewell, a penal institution maintained by the City of Chicago and supervised by Frank Sain, as warden. At the Bridewell his wound was cleaned and bandaged and he was given an anti-tetanus shot (R. 83). They placed him on a flat board* and then carried him into a ward where they placed him on a cot (R. 83). The wound, which up to that point had felt numb, became extremely painful and plaintiff called for something to stop the pain (R. 84).* No one came except the orderlies and they only gave him water (R. 84).* Plaintiff did not fall asleep until 6:00 or 6:30 in the morning. He had slept only one and a half hours when Krause and Miller came in to question him (R. 84).*

Plaintiff asked Krause and Miller to explain why he was in the Bridewell (R. 84). They told him it was just

an unfortunate occurrence and were apologetic (R. 85). At the time plaintiff was sore, sick to his stomach, and unable to eat (R. 85).* Then Krause and Miller took a written statement from William Bucher and told him that he was "being held for suspicion as a robbery suspect" (P. Ex. 1, R. 114, 279, 698).* Plaintiff's statement showed that he was William G. Bucher of 310 South Victor, Tulsa, Oklahoma, was employed as an airplane mechanic by American Airlines in Tulsa, Oklahoma, and that he had never been arrested before.* Crutale was then brought in by two policemen and asked to say whether Bucher was Nick. Crutale looked and said, "No, that isn't the man" (R. 350). After Crutale was taken away, plaintiff again asked the officers to telephone his fiancee or to let him get in touch with her (R. 87, 135).*

Unaware of these events Ruth Franke, the girl whom plaintiff was to marry on Saturday afternoon, went to the Illinois Central Station at Randolph and Michigan where she was to meet William Bucher at 9:00 on Saturday morning (R. 189).* She waited there for one hour and fifteen minutes, intermittently calling her home (R. 189-190).* At 10:15 A. M. she went to the Marriage License Bureau in the County Building where she again waited, again making telephone calls (R. 190-192).* At noon she talked with a lady clerk who asked her into her office (R. 193).* There newspaper reporters questioned her and photographers took her picture (R. 193).* It was at this time Saturday noon that Ruth first learned that her fiance had been shot and was in the Bridewell Hospital (R. 194).* Hoping that plaintiff would appear later for their wedding, she signed a marriage license and left to make arrangements for the wedding (R. 193).*

After Krause and Miller had left the Bridewell Saturday morning, and while Ruth was waiting for her fiance

downtown, plaintiff kept asking everyone and anyone to get in touch with Ruth or to let him call her.* He talked to a doctor and a guard (a uniformed policeman) (R. 88).* The doctor laughed and told plaintiff he would not be married that day (R. 88).* When he tried to ask a nurse to call Ruth, the nurse wouldn't even talk to him (R. 89).*

Melvin Larson, a newspaper photographer, was one of the newspaper men in the County Building taking pictures of Ruth Franke Saturday noon (R. 238).* Larson then went to the Bridewell where he took pictures of the plaintiff (R. 239).* Before going to the Bridewell, Larson telephoned Police Commissioner Prendergast, warden Sain, and the Sheffield Avenue Police Station (R. 238-239). (Both Sain and Goldberg admitted having received telephone calls Saturday relating to William Bucher (R. 201, 217, 553, 567).)

At about 2:30 P. M. (R. 135), plaintiff was released from the Bridewell into the custody of two uniformed policemen who put him into a patrol wagon and took him to Sheffield Avenue Police Station (R. 93-94). It was difficult for plaintiff to walk; his body ached and was sore and his stomach was tied in a knot* and it was necessary for the police officers to assist him in getting in and out of the patron wagon (R. 94-95, 138).

At the Police Station plaintiff was told to go into a room where he talked with Captain Goldberg and two other men (R. 94-95).* Goldberg having learned that plaintiff had about $60 or $65 (R. 562) told him "that is more than you'll need. You will put up part of that money as a bond and you'll appear in court Monday morning" (R. 562).* Then Goldberg ordered plaintiff booked for resisting arrest (R. 224, 562, 569, 571). (In testifying Goldberg flatly denied four successive times that he had ordered Bucher booked for resisting arrest (R. 222). On

further questioning he finally admitted he had done so (R. 224).) Krause then told plaintiff he had to post a bond of $50.00 "on a technical charge of resisting arrest" (R. 99).*

Finally, plaintiff was taken by reporters back to his hotel and then to the church where he was married at 5:00 o'clock that afternoon (R. 100).

That evening plaintiff was still "awfully nervous", his stomach was "tied in a knot", and he couldn't walk or sit without great pain (R. 100).* That night when plaintiff and his wife went to their hotel room, plaintiff was sick to his stomach and he could barely walk (R. 101). Moreover, he was unable to get much sleep because no matter how he lay, his wound was extremely painful (R. 101, 194). The next day his physical condition was unchanged and he went to see Dr. Bowman at Bethany Hospital for treatment (R. 102).

Monday morning plaintiff and his wife arrived at the Town Hall Court. Defendant Krause met them there and, after informing them that the Judge might be late, invited plaintiff and his wife to step outside and have a drink with him (R. 103).* After they returned to the courtroom, Bucher's case was called and the City Prosecutor, Mr. Barth, told the Judge about the case (R. 105); then Krause told his story (R. 105) and Higgins agreed with what Krause had said (R. 470). Plaintiff likewise told his story and at that point the Judge, according to both plaintiff and Barth, stated "there should be some fund to compensate this lad" (R. 451, 106, 179) or words to that effect.* Barth was then directed by the Judge to find out whether there was such a fund and he said he didn't know but would check (R. 106, 179).* Plaintiff and his wife waited on the courtroom benches for an hour.* Then Krause told them to go into an anteroom* where they

found Krause, Higgins and another man with them who said he was a lawyer (R. 106, 180).* Bucher was told by this man that he had no case against the police officers (R. 107, 182). Shortly thereafter, Barth came in with a document which plaintiff looked at hurriedly (R. 108, 181-183).* It did not make sense to plaintiff (R. 183),* and he didn't understand some of the words in it (R. 183),* but the man who said he was a lawyer told him that if he signed the paper, the case would be over and he could go home (R. 108, 183). (The release had been typed for Barth by Higgins (R. 471)*.) Plaintiff thereupon signed the paper (R. 108). Barth did not explain the substantive terms of the release to the plaintiff (R. 450-451),* although he at first claimed that he had (R. 442).*

The release executed by the plaintiff recites in substance that the undersigned was arrested and charged with violations of certain City ordinances, was *accidentally* shot and wounded during the conduct of an investigation and that the City of Chicago consented "to dismiss said complaint or take a non-suit in said case" and that in consideration of said dismissal or non-suit, the undersigned would "release, remise and discharge" Krause, Higgins and the City of Chicago, its officers, agents, employees and attorneys from all claims arising out of the "arrest, detention and accidental shooting" (Pl. Ex. 20, R. 114, 279, 704-705).*

The plaintiff was not represented by an attorney in the Municipal Court (Pl. Ex. 33, R. 279, 711).* (Although Barth had previously testified to the contrary (R. 444), when shown the Municipal Court half sheet (Pl. Ex. 33, R. 279, 711) he recalled "very definitely" that Bucher "was there in that Police Court without any attorney" (R. 449).)* No motion was made for a dismissal, or nonsuit (R. 452).* According to plaintiff's Exhibit No. 33-C

(R. 279, 715-717) Bucher was actually tried before the Municipal Court without a jury, found not guilty by the court,* judgment was entered on the finding, and Bucher was discharged (R. 716).*

After plaintiff had signed the release, his case was called again; Barth told the Judge that he had a release, and Judge Smith wished Bucher a happy honeymoon "under the circumstances" (R. 108). Bucher was then given a stamped receipt for the $50.00 bond he had posted and was told he could claim a refund at the City Hall (R. 183). He left the courtroom and a few days later, after several further treatments by Dr. Bowman, returned to Oklahoma.

DR. SHAFER (R. 149-162).

When a pilonidal sinus becomes infected, it is called an abscess (R. 160).* The draining of Bucher's pilonidal sinus, which commenced four months following the shooting, was caused by the bullet wound sustained by plaintiff (R. 155-156).* In order to treat plaintiff's pilonidal sinus condition, "it will be necessary to completely excise the sinus, although that does not necessarily mean that it will not recur * * *" (R. 156).* Metal filings are present both in the bone and the tissue of plaintiff's body in the area traversed by the bullet (R. 152).* Since these metal filings are foreign material in the body and are not inert they can, at any time the plaintiff's resistance might be lowered, cause osteomyelitis (R. 156).* In order to treat osteomyelitis, which is an infection of the bone, the bone must be drained and in many instances the bone must be removed (R. 157).* In plaintiff's case, since the metal filings in his sacrum are a potential source of osteomyelitis, the treatment will require a radical type of operation because the sacrum is located at the lower end of the spinal column (R. 157).*

The pain present in plaintiff's legs and back, particularly when stooping, bending or lifting; the draining from the pilonidal sinus; the existing pain and discomfort in the area of the wound; and the presence of metal particles in the bone and tissue of plaintiff's body were all caused by the bullet wound sustained by plaintiff (R. 153-156).* This condition of plaintiff is *permanent* (R. 156).*

Osteomyelitis does not necessarily follow within the course of a short time after an injury such as plaintiff sustained (R. 162).* Actually osteomyelitis can occur medically forty years after the original injury and still be attributed to the old injury (R. 162).*

DR. BOWMAN (R. 162-170).

The bullet did not merely go through the fleshy part of plaintiff's buttocks.* It actually went from one side of the pelvis to the other,* puncturing both sacroiliac joints,* breaking the bone in four places,* splintering the bone as it traversed the body,* tearing out a piece of the anterior portion of the sacrum,* and leaving metal filings in its path (R. 164-167, 170).* The bone through which the bullet passed had not, at the time of the trial, fully healed (R. 170);* and the pelvis and spine, as shown in the X-ray pictures were not normal (R. 170).*

Defendants offered no medical evidence or testimony on their behalf in the trial of this case.

II.

DISCUSSION.

Many of petitioners' 41 alleged "Questions Presented" (Pet. 32-41) are predicated upon their own distorted view of the facts. Such questions do not arise when considered in light of the statement of the case in the opinion by the Court of Appeals (R. 813-816) and the Supplemental Statement of Facts hereinabove set forth. It is not the function of this Court to grant certiorari in order to review findings of fact. *Graver Tank & Mfg. Co., Inc. et al.* v. *Linde Air Products Co.*, 336 U. S. 271, 275; *Southern Power Co.* v. *North Carolina Public Service Co.*, 263 U. S. 508, 509.

The remainder of the 41 alleged "Questions Presented" are solely questions of law. In arguing these as well as the other questions, in their "Reasons Relied Upon for the Allowance of the Writ" (Pet. 42-93), petitioners have reverted to a restatement of virtually all the arguments on the merits which they presented in their briefs on appeal. Many of these arguments were repeated in their petition for rehearing (see R. 832-833) and reanswered in our answer to their petition for rehearing (see R. 837-847). Jurisdiction to grant certiorari was not conferred upon this Court "to give the defeated party in the Circuit Court of Appeals another hearing." *Magnum Import Co.* v. *Coty*, 262 U. S. 159, 163; *Houston Oil Co. of Texas et al.* v. *Goodrich et al.*, 245 U. S. 440.

The decision of the Court of Appeals is correct in its statement of facts and in its determination of the applicable law (R. 813-830). When considered with an accurate statement of facts and applicable law, the decision of the Court of Appeals does not conflict with any controlling

decisions of this Court or of the Supreme Court of Illinois. Moreover, not one of the arguments alleged by petitioners presents a question or involves a principle of far reaching importance which so affects the public interest as to require determination by this Court. See *Layne & Bowler Corporation* v. *Western Well Works, Inc., et al.*, 261 U. S. 387, 393; *Magnum Import Co.* v. *Coty*, 262 U. S. 159, 163; *United States* v. *Rimer et al.*, 220 U. S. 547; U. S. Sup. Ct. Rule 38(5), 28 U. S. C. A.

We do not believe the Petition even meets the requirements as to form set forth in U. S. Sup. Ct. Rules 27(2) and 38(2), 28 U. S. C. A., particularly in view of its extreme length. *Humble Oil & Refining Company* v. *Campbell*, 292 U. S. 648; *Kunglig Jarnvagsstyrelsen* v. *The National City Bank of New York*, 275 U. S. 497; *Brown, et al.* v. *Krietmeyer*, 275 U. S. 496; *Tiger* v. *Lozier*, 275 U. S. 496.

Since petitioners' case presents no special or important reason for granting a writ of certiorari we request that their Petition be denied.

Respectfully submitted,

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